*THE HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.No.16797 of 2005

% 05-10-2005

M/s.Radha Modern Rice Mill, Yemmiganur Road, Kodumr Village & Mandal, Kurnool District.

.. Petitioner.

Vs.

$ The District Collector, Kurnool & others

..

Respondents

<GIST:

>HEAD NOTE:

! Counsel for the petitioner : Sri K.V.Raghuveer

^ Counsel for the respondents : Government Pleader for Civil

Supplies.

?CASES REFERRED :

[1] 2002 (4) ALD 93

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No.16797 of 2005

Date 05-10-2007

Between:
M/s.Radha Modern Rice Mill, Yemmiganur Road, Kodumr village & mandal, Kurnool District.

..... PETITIONER

AND

The District Collector, Kurnool & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No.16797 of 2007

ORDER:

This Court issued Rule Nisi on 19-06-2006 and granted interim suspension.

2. This writ petition is filed seeking a Writ of Mandamus declaring the order of the second respondent demanding to pay an amount of Rs.56,000/- equivalent to the stock confiscated in the year 1993 vide proceedings dated
09-06-2005 as illegal, arbitrary and barred by limitation and consequently, to set aside the proceedings of the second respondent dated 09-06-2005.

3. It is averred in the affidavit filed in support of the writ petition that on 01-01-1987 the Special Deputy Thasildhar, Check post, Morampally checked a lorry bearing No. CMA 449 and found that the lorry driver was transporting rice of 100 quintals of the petitioner-firm, that the driver on demand produced the permit dated 29-12-1986 issued by the Collector and found that on the reverse side, it was incompletely filled. It is further averred that the stocks and the lorry were released after obtaining cash security of Rs.6,000/- and third party security of immovable property for Rs.50,000/-. It is also averred that in 6A proceedings initiated by the Joint Collector on the

confiscated stocks, he imposed the fine equivalent to the value of the stock seized on the owner of the lorry by his order dated 04-07-1988. Aggrieved thereby, the petitioner filed an appeal before the Commissioner of Civil Supplies and that the Commissioner, by his order dated 13-12-1993, confirmed the same. It is averred that on the directions of the first respondent, vide proceedings dated 17-11-2004, the Mandal Revenue Officer issued a notice dated 09-06-2005 to the petitioner to remit an amount of Rs.56,000/-, the value of the stocks seized which was transported illegally. Under Section 7A of the Essential Commodities Act, the Central Government has power to recover certain amounts as arrears of land revenue where any person, liable to pay any amount in pursuance of any order under Section 3 or deposit any amount to the credit of any account or fund constituted by or in pursuance of any order made under that section fails to pay the same. It is further averred that under the A.P.Revenue Recovery Act and the Essential Commodities Act, the limitation to recover the arrears had not been prescribed. Article 137 of the Limitation Act provided that any other application for which no period of limitation is provided else where in this division the period of limitation to be taken is three years and the time begins to run when the right accrues. It is also averred that the notice issued by the second respondent dated 09-06-2005 making a demand for payment of the confiscated stock in the year 1993 is barred by limitation. Thus a specific stand had been taken that such demand cannot be made and the proceedings are liable to be quashed.

4. In the counter affidavit filed on behalf of the respondents, it is stated that the issue arose only on the orders passed by the Joint Collector/District Collector, Anantapur on 04-07-1988 and that the District Collector, Kurnool is no way concerned with the matter and as such, the petitioner committed mistake and placed false information before this Court. Further, a specific stand had been taken that under 6A proceedings, the Joint Collector confiscated the

seized stock by his order dated 04-07-1988 and the same was confirmed by the Commissioner of Civil Supplies. It is also averred that the second respondent received letters dated 17-11-2004 and 26-05-2005 from the first respondent directing the second respondent to recover an amount of Rs.56,000/- from the petitioner towards the value of the seized stock and issued a notice to that effect. It is averred that under Section 7A of the Essential Commodities Act, 1955, any amount pursuant to an order made under Section 3 of the Essential Commodities Act, 1955, fell due, the Government can recover the amounts from the persons liable to pay as arrears of Land Revenue. The second respondent, being authorized person to recover Government dues under the Revenue Recovery Act at Mandal level, had exercised his powers under the Revenue Recovery Act and issued a notice to the petitioner to pay government dues and hence his action was in accordance with the rules. It is also averred in the counter that the limitation is not applicable to the proceedings of A.P.Revenue Recovery Act and the Essential Commodities Act and, hence the action of the second respondent in issuing direction to the petitioner to remit the amount of the seized stocks to the Government is in accordance with the rules.

Section 7 of the Essential Commodities Act reads thus:

Power of Central Government to recover certain amount as arrears of Land Revenue (or as a Public Demand) – (1) where any person liable to :

(a) pay any amount in pursuance of any order made under Section 3 or ;

(b) deposit any amount to the credit of any account or fund constituted by or in pursuance any order made under that section, makes any default in paying or depositing the whole or any part of such amount, the amount in respect of which such default has been made shall whether such order was made before or after the commencement of Essential Commodities (Amendment) Act, 1984, and whether the liability of such person to pay or deposit such amount arose before or after such commencement be recoverable by Government together with

> simple interest due thereon computed at the rate of fifteen percent per annum from the date of such default to the date of recovery of such amount, as an arrear of Land Revenue or as a Public Demand.

In the circumstances, the amount in respect of default has to be recovered by the Government with simple interest due thereon computed at the rate of 15% per annum from the date of such a default to the date of recovery of such amount as arrears of Land Revenue. It is further averred that though the Commissioner of Civil Supplies, Andhra Pradesh, Hyderabad has issued confiscation orders on 13-12-1993, the petitioner has failed to pay the confiscated value of the seized stock since 1988 and now, he is claiming exemption under the Limitation Act. It is also averred that with regard to the amount relating to the confiscated value of the seized stocks, the petitioner preferred appeal before the Commissioner of Civil Supplies, A.P., Hyderabad under Section 6C of the Essential Commodities Act, 1955 on the orders passed by the Joint Collector, Anantapur and his appeal was dismissed by the C.C.S. A.P. Hyderabd and, therefore, the action of the second respondent in issuing notice dated 09-06-2005 to the petitioner is in accordance with the provisions under the Andhra Pradesh Revenue Recovery Act and the Essential Commodities Act.

5. Strong reliance was placed on the decision of this Court in **Syndicate Bank v. Excise Superintendent, Warangal**[1], wherein the learned Judge while dealing with Section 52-A of the Revenue Recovery Act observed as under:

> "The Revenue Recovery Act is originally meant to assist the Government officials for the recovery of the amounts due to the Government. Subsequently, certain amendments were brought to the said Act extending the benefit to the Nationalized Banks and Government Corporations etc. There is no force is the contention of the learned counsel for the bank that the defendant is taking the help of the provisions of Section 52-A. when once

the Government is vested with the power, conferred on the Government under the Excise Act, to recover the amount due, it has every right against anybody, including a bank exclusively owned by the Government of India, for recovery of the amount due to it.

The learned counsel for the appellant-bank also contended that the defendant cannot take the help of the provisions of the Revenue Recovery Act for realization of the amount due, after the period of three years. The said contention has no force. No injunction can be granted by a civil Court restraining the Excise Department from exercising a statutory right conferred on it under Section 65 of the Excise Act. The defendant invoked the bank guarantee within time. Therefore, the amount became due to the Government. Though it is stated in Ex.A.4-demand notice dated 20-06-1995 that the defendant would be constrained to take the aid of the provisions of the Revenue Recovery Act, he did not initiate any action under the said Act. In the event of the concerned authorities taking action under the Revenue Recovery Act, they may apply to the Civil Court, under Section 59 of the Revenue Recovery Act, for redress within six months from the date of cause of action. But, when no action was initiated by the Excise Department resorting to the provisions of the Revenue Recovery Act, there is no cause of action for the plaintiff to go to a civil Court to seek the relief of injunction. The plaintiff instead of making the payment due under the bank guarantee approached the civil Court without any cause of action by twisting the facts for the reasons best known to it. I therefore hold that the defendant has every right to take the aid of the provisions of the Revenue Recovery Act for realization of the amounts due to the Government against the plaintiff, which is a nationalized bank. This point is accordingly answered in favour of the defendant and against the plaintiff-bank."

6. In the light of the views expressed by the learned Judge at paras 20, 21 of the decision referred to supra and also in the light of the specific stand taken in the affidavit filed in support of the writ petition and the stand taken in the counter affidavit, the only question which may have to be decided is that whether the demand made is without authority since the same is being barred by limitation.

7. Inasmuch as the ordinary period of limitation specified in the

schedule of the provisions of the Limitation Act, 1963, cannot be imported while interpreting the provisions of the other legislations, this Court is inclined to follow the view expressed by the learned Judge in **Syndicate Bank** (1 supra). In the light of the same, there is no illegality in the demand made and accordingly, the writ petition shall stand dismissed. No order as to costs.

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05-10-2007

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[1] 2002(4) ALD 93